

ORIGINAL  
FILED

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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 Yevgeniy Chechenin (CA Bar # 242469)

2 Community Legal Centers

3 P. O. Box 605

4 San Mateo, CA 94401

5 Telephone: (650) 347-6191

6 Fax: (650) 401-6621

7 Attorney for Petitioner

8 UNITED STATES DISTRICT COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA  
11  
12 SAN FRANCISCO DIVISION

JSW

13 Cuong Dang,

14 Petitioner,

15 v.

16 Michael B. Mukasey, United States Attorney  
17 General;

18 Michael Chertoff, Secretary of the Department of  
19 Homeland Security;

20 Emilio Gonzalez, Director of United States  
21 Citizenship and Immigration Services (USCIS);

22 Rosemary Melville, Director of USCIS

23 San Francisco District Office;

24 Rober S. Mueller, Director of the Federal Bureau  
25 of Investigation (FBI),

26 Respondents.

27 PETITION FOR HEARING ON NATURALIZATION APPLICATION  
28  
29 PURSUANT TO 8 U.S.C. § 1447(b)

## I. INTRODUCTION

Petitioner, Cuong Dang (Alien Registration Number 042-364-714), respectfully petitions this court pursuant to 8 U.S.C. § 1447(b) to conduct a hearing on his application for naturalization for which the San Francisco Office of USCIS has delayed adjudication and failed to make a decision within the statutorily mandated period of 120 days from the initial naturalization interview.

## II. JURISDICTION

Under Section 336(b) of the Immigration and Nationality Act, if the agency fails to make a decision on an application for naturalization within 120 days after the initial examination scheduled under 8 U.S.C. § 1446, “the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter.” 8 U.S.C. § 1447(b). In such a case, the district court acquires “jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.” 8 U.S.C. § 1447(b). As the Ninth Circuit explained in *United States v. Hovsepian*, 359 F.3d 1144, 1161 (9th Cir. 2004) (en banc), “8 U.S.C. § 1447(b) requires the INS to make a decision regarding a naturalization application within 120 days of the INS's initial interview of the applicant.” The consequence of the agency’s failure to make such a decision in a timely manner is that “the district court gains jurisdiction over the matter (upon the applicant's request) until the district court decides the case or exercises its discretion to remand the matter to the INS.” *Id.* In addition, the Ninth Circuit emphasized that when an applicant asks the district court to adjudicate his naturalization application, the court acquires exclusive jurisdiction over his application and the agency loses such jurisdiction. *Id.* at 1162. (“Under § 1447(b), the court has the last word by exercising exclusive jurisdiction over those naturalization applications on

1 which the INS has failed to act in a timely fashion.”) In other words, even if the agency makes a  
2 decision on the application after the district court acquired jurisdiction over it, such a decision  
3 will have no legal effect.<sup>1</sup>

4 Petitioner’s initial naturalization interview was conducted on November 10, 2005.  
5 USCIS failed make a decision on petitioner’s naturalization application within 120 days after  
6 that interview. Therefore, this court has jurisdiction over Petitioner’s application for  
7 naturalization. After this petition is properly filed with this Court, USCIS loses any authority  
8 over Petitioner’s application and this Court “has the last word by exercising exclusive  
9 jurisdiction” over Petitioner’s application because USCIS “has failed to act in a timely fashion.”  
10 *Hovsepien*, 359 F.3d at 1162.  
11

### 12 III. VENUE

13 Pursuant to 8 U.S.C. § 1447(b), venue is proper in this case as this is the United States  
14 District Court for the district where the Petitioner resides.  
15

### 16 IV. PARTIES

17 Petitioner is Cuong Dang (Alien Registration Number A042-364-714), an applicant for  
18 naturalization. He is a resident of Union City, California.  
19

20 Respondents are the Attorney General of the United States, and the agencies of the  
21 United States government involved in the acts challenged in this petition, as well as their  
22 officers.  
23

24  
25  
26 <sup>1</sup> See *Hovsepien*, 359 F.3d at 1163 (“allowing the INS to retain jurisdiction over a naturalization  
27 application even after the INS fails to act will frustrate Congress’ intent to require the INS to  
28 make a determination within 120 days of an applicant’s examination.”).  
29

## V. STANDARD OF REVIEW

Under the Ninth Circuit precedent, this Court has power to conduct a *de novo* hearing on Petitioner's naturalization application. *Hovsepien*, 359 F.3d. at 1163. The *Hovsepien* court compared 8 U.S.C. § 1421(c) requiring the district court to conduct a *de novo* hearing after USCIS denies a naturalization application with 8 U.S.C. § 1447(b) and concluded that "the district court's powers of investigation should be the same under each statutory provision" and that "[i]t makes little sense to require the district court to undertake a *de novo* inquiry after the INS has made a full investigation and arrived at a reasoned decision, but to bar a *de novo* hearing when the INS has not issued a decision and likely has not concluded its investigation." *Id.*

Thus, under *Hovsepien*, this Court has power to hold a *de novo* hearing on Petitioner's naturalization application and to determine Petitioner's eligibility to become a United States citizen.

## VI. STATEMENT OF FACTS

Petitioner is a United States lawful permanent resident since January 25, 1990. *See Exhibit A.* On July 12, 2005, he filed an N-400 application for citizenship with Respondent, United States Citizenship and Immigration Services (USCIS). *See Exhibit B.* On November 10, 2005, Petitioner was interviewed by a USCIS officer in connection with his naturalization application. *See Exhibit C.* Petitioner's N-400 application remains adjudicated.

After his naturalization interview, Petitioner inquired into the status of his naturalization application multiple times. In response to his inquiries, Respondent USCIS notified him that his N-400 remained pending because "the required investigation into your background remains open." *See Exhibit D.*



### VIII. REQUEST FOR RELIEF

Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter and hold a hearing over Petitioner's naturalization application pursuant to Section 336(b) of the Immigration and Nationality Act, 8 U.S.C. § 1447(b).
2. Order Respondents to show cause why Petitioner's application for naturalization should not be granted.
3. Conduct a *de novo* review of Petitioner's application for naturalization as authorized by *Hovsepian*, 359 F.3d. at 1163, and determine whether Petitioner's application for naturalization should be approved.
4. If this court finds that Petitioner is eligible for naturalization and approves his naturalization application, administer the Oath of Allegiance to Petitioner.
5. Pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, award Petitioner costs and attorney fees if Petitioner prevails in this action.

Dated: April 10, 2008

Respectfully Submitted,



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Yevgeniy Chechenin,  
Attorney for Petitioner.

**EXHIBITS**

**EXHIBIT A – Copy of Petitioner’s Permanent Resident Card;**

**EXHIBIT B – Copy of N-400 Receipt Notice issued by USCIS to Petitioner;**

**EXHIBIT C – Copies of N-652 Naturalization Interview Results and Request for Evidence;**

**EXHIBIT D – Copies of two USCIS Responses to Petitioner’s case status inquiries;**

# EXHIBIT A



# PERMANENT RESIDENT CARD

NAME DANG, CUONG C



A# 042-364-714

Birthdate	PART	Category	Sex
1950-01-01	1	Male	Male
1950-01-01	2	Female	Female
1950-01-01	3	Male	Male
1950-01-01	4	Female	Female
1950-01-01	5	Male	Male
1950-01-01	6	Female	Female
1950-01-01	7	Male	Male
1950-01-01	8	Female	Female
1950-01-01	9	Male	Male
1950-01-01	10	Female	Female
1950-01-01	11	Male	Male
1950-01-01	12	Female	Female
1950-01-01	13	Male	Male
1950-01-01	14	Female	Female
1950-01-01	15	Male	Male
1950-01-01	16	Female	Female
1950-01-01	17	Male	Male
1950-01-01	18	Female	Female
1950-01-01	19	Male	Male
1950-01-01	20	Female	Female
1950-01-01	21	Male	Male
1950-01-01	22	Female	Female
1950-01-01	23	Male	Male
1950-01-01	24	Female	Female
1950-01-01	25	Male	Male
1950-01-01	26	Female	Female
1950-01-01	27	Male	Male
1950-01-01	28	Female	Female
1950-01-01	29	Male	Male
1950-01-01	30	Female	Female
1950-01-01	31	Male	Male
1950-01-01	32	Female	Female
1950-01-01	33	Male	Male
1950-01-01	34	Female	Female
1950-01-01	35	Male	Male
1950-01-01	36	Female	Female
1950-01-01	37	Male	Male
1950-01-01	38	Female	Female
1950-01-01	39	Male	Male
1950-01-01	40	Female	Female
1950-01-01	41	Male	Male
1950-01-01	42	Female	Female
1950-01-01	43	Male	Male
1950-01-01	44	Female	Female
1950-01-01	45	Male	Male
1950-01-01	46	Female	Female
1950-01-01	47	Male	Male
1950-01-01	48	Female	Female
1950-01-01	49	Male	Male
1950-01-01	50	Female	Female
1950-01-01	51	Male	Male
1950-01-01	52	Female	Female
1950-01-01	53	Male	Male
1950-01-01	54	Female	Female
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1950-01-01	57	Male	Male
1950-01-01	58	Female	Female
1950-01-01	59	Male	Male
1950-01-01	60	Female	Female
1950-01-01	61	Male	Male
1950-01-01	62	Female	Female
1950-01-01	63	Male	Male
1950-01-01	64	Female	Female
1950-01-01	65	Male	Male
1950-01-01	66	Female	Female
1950-01-01	67	Male	Male
1950-01-01	68	Female	Female
1950-01-01	69	Male	Male
1950-01-01	70	Female	Female
1950-01-01	71	Male	Male
1950-01-01	72	Female	Female
1950-01-01	73	Male	Male
1950-01-01	74	Female	Female
1950-01-01	75	Male	Male
1950-01-01	76	Female	Female
1950-01-01	77	Male	Male
1950-01-01	78	Female	Female
1950-01-01	79	Male	Male
1950-01-01	80	Female	Female
1950-01-01	81	Male	Male
1950-01-01	82	Female	Female
1950-01-01	83	Male	Male
1950-01-01	84	Female	Female
1950-01-01	85	Male	Male
1950-01-01	86	Female	Female
1950-01-01	87	Male	Male
1950-01-01	88	Female	Female
1950-01-01	89	Male	Male
1950-01-01	90	Female	Female

10/09/01

Country of origin

Vietnam 

01/13/15

Resident Since 01/25/90



C1USA0423647140WAC0480057781<<  
7710090M1501135VNM<<<<<<<<<<8  
DANG<<CUONG<C<<<<<<<<<<<<<<<<

UNITED STATES OF AMERICA Department of Homeland Security

# PERMANENT RESIDENT CARD

The person identified by this card is authorized to work and reside in the U.S.



# **EXHIBIT B**



# EXHIBIT C

Department of Homeland Security  
U.S. Citizenship and Immigration Services

## N-652, Naturalization Interview Results

A#: \_\_\_\_\_

On \_\_\_\_\_, you were interviewed by USCIS officer RUE

A042364714  
A042364714



- ☐ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to \_\_\_\_\_ speak/ \_\_\_\_\_ read/ \_\_\_\_\_ write \_\_\_\_\_ English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☒ Please follow the instructions on Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your \_\_\_\_\_ English ability/ \_\_\_\_\_ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A)            **Congratulations! Your application has been recommended for approval.** At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) ☒ **A decision cannot yet be made about your application.**

**It is very important that you:**

- ☒ Notify USCIS if you change your address.
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#,) and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

**NOTE:** Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.

## MAIL DOCUMENTS/INFORMATION TO:

U.S. Citizenship and Immigration Services  
1301 Clay Street, Room 380-N  
Oakland, CA 94612-5217



U.S. Citizenship  
and Immigration  
Services



A042364714  
A042364714

File No:

Officer: R A-E

Date:

CUONG C DANG  
15367 RUGGLES ST  
SAN LEANDRO CA 94579

Examination of your application (N400) shows that additional information, documents or forms are needed before your application can be acted upon. Please **RETURN THIS LETTER WITH REQUESTED INFORMATION and/or DOCUMENTATION** by: DECEMBER 10, 2005

***Failure to do so may result in the denial of your application.***

- ☒ A court certified disposition, complaint, sentence, and proof of fulfillment of sentence (i.e. completion of probation, completion of community service, completion of term of imprisonment) for any and all your arrests even if expunged. If no record is available, submit a certified letter from the court stating there is no record. Do NOT submit a police clearance or a photocopy.
- ☐ A Police clearance letter from all cities you have resided the past 5 years. (Documentation must be original or certified by the police)
- ☐ Original or certified letter re: child support obligations for your child(ren) and jurisdiction where child lives (if this becomes known to you).
- ☐ Two copies of the birth and baptismal certificates for all children (with translations, if applicable).
- ☐ Marriage certificate from all marriages and/or petition and final divorce decree from former spouse(s).
- ☐ Copy of rent agreement, deed, insurance binder, utility bills, bank/credit statements, other specified evidence of marital union.
- ☒ 2002, 2003 and 2004 Copy of income tax returns (forms 1040 & 540) and W-2's for you and your spouse for tax year(s)

- ☐ A more detailed Form N-648 or letter from your medical doctor/psychiatrist to support your disability exception claim.
- ☐ Letter from Welfare Department/Social Security agency regarding eligibility, attached.
- ☐ List of all trips from \_\_\_\_\_ to \_\_\_\_\_. ☒ Copies of all pages of your passports and/or travel documents. OR
- ☐ Proof of registration with the Selective Service. ☐ Affidavit in regards to why you did not register for the Selective Service.
- ☐ Copy of the front and back of your Alien Registration Card.
- ☒ Other: EVIDENCE OF PHYSICAL PRESENCE / RESIDENCE IN THE UNITED STATES

- ✓ • Bank or Credit Statements showing activity by you.
- ✓ • Appointment notices or receipts from a doctor or hospital.
- ✓ • Any other evidence of your physical presence in the United States: insurance policies, receipts from purchases, licenses, letters, postal cards, travel itineraries or receipts, employment records, listing in city directories, membership in organizations, police records, census records, leases and / or deeds

Please notify this office of any address changes before the final decision in your case.  
Due to heavy work loads, please allow a minimum of three months past the due date noted above for a response.

# EXHIBIT D

U.S. Department of Homeland Security  
USCIS  
630 Sansome Street  
San Francisco, CA 94111



**U.S. Citizenship  
and Immigration  
Services**

Friday, November 16, 2007

CUONG DANG  
15367 RUGGLES ST  
SAN LEANDRO CA 94579

Dear Cuong Dang:

On 11/15/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

<b>Caller indicated they are:</b>	Applicant or Petitioner
<b>Attorney Name:</b>	Information not available
<b>Case type:</b>	N400
<b>Filing date:</b>	03/18/2005
<b>Receipt #:</b>	WSC*001347944
<b>Beneficiary (if you filed for someone else):</b>	Information not available
<b>Your USCIS Account Number (A-number):</b>	A042364714
<b>Type of service requested:</b>	Outside Normal Processing Times

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. In some instances, we have established separate processing time goals following certain kinds of actions. This case is within that normal processing time. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within 8 months of this letter, please contact us by calling our customer service number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services



U.S. Department of Homeland Security  
USCIS  
630 Sansome Street  
San Francisco, CA 94111



**U.S. Citizenship  
and Immigration  
Services**

Wednesday, December 28, 2005

CUONG CHI DANG  
15367 RUGGLES ST  
SAN LEANDRO CA 94579

Dear CUONG CHI DANG:

On 12/28/2005 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

<b>Caller indicated they are:</b>	The applicant
<b>Attorney Name:</b>	Information not available
<b>Case type:</b>	N400
<b>Filing date:</b>	04/15/2005
<b>Receipt #:</b>	WSC*001347944
<b>Beneficiary (if you filed for someone else):</b>	DANG, CUONG, CHI
<b>Your USCIS Account Number (A-number):</b>	A042364714
<b>Type of service requested:</b>	Case Status - Outside Processing Time

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services